IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3607 OF 2005
IN
CRIMINAL APPEAL NO. 534 OF 2005

Mohd. Altaf Khan Santosh
Rajput @ Altaf Khan ...Applicant

Vs.

State of Maharashtra ...Respondents

...

Mr. Milind Dhande Advocate for Applicant
Mr. V.B.Konde-Deshmukh, A.P.P. for the State

...

CORAM: SMT.V.K.TAHILRAMANI,J.

DATE : JULY 5,2005

P.C.

1. Heard both sides.

2. The applicant is praying for bail. The applicant has been convicted under Sections 392 and 397 of IPC and sentenced to R.I. for seven years. The evidence of P.W.1 Mishrimal Jain and P.W.2 Kantilal Mehta clearly implicates the applicant.

They have stated that the applicant along with others entered into their house and robbed them at the point of knives.

3. The learned advocate for the applicant has submitted that there is a delay of about 3 months in holding the test identification parade and there are lacunae in holding the test identification parade and in such case, the identification in such parade, cannot be relied upon. I find no merit in this submission because the incident in the present case had taken place on 3.11.2001 and the applicant was arrested only on 28.2.2002 and thereafter the parade was held. The delay has mainly occurred on account of the applicant evading arrest.

4. As far as the other lacunae are concerned, I find the evidence of the complainant and P.W.2 Kantilal Mehta clearly implicates the applicant. P.W.1 Mishrimal Jain and P.W.2 Kantilal Mehta had sufficient opportunity to observe the applicant who was present for sufficiently long period of time in the office of the complainant. In this view of the matter, even assuming that there are some lacunae

in test identification parade, the identification by P.W.1 Mishrimal Jain and P.W.2 Kantilal Mehta, can be relied upon.

5. It needs to be emphasised that there is no proposition of law or of practice having universal application to all cases that it is imperative to hold test identification of an accused person who is not known to the witnesses prior to the identification and the absence to do so would vitiate the evidence of identification of the accused person by the witnesses, for the first time in the Court.

. In this connection, it will be useful to refer to some of the observations made by the Supreme Court in **(2004) 3 Supreme Court Cases 116 (Ashfaq Vs. State)** in the said case it has been observed that:

> "Though as a matter of general principle, the point urged with reference to the omission to conduct earlier the test identification

> parade may be correct, the question as to whether there is any violation of the same in a given case would very much depend on the facts and circumstances of each case and there cannot be any abstract general formula for universal and ready application in all cases."

In the above case it is further stated that in the case of Ramanbhai Naranbhai Patel it is observed as under:

> " Two eyewitnesses in the said case were assaulted and seriously injured in broad daylight, they could have easily seen the faces of the assailants and their appearance and identity would well remain imprinted in their minds and the third witness who was said to have seen the fatal assault on her husband could also be easily considered to have got imprinted in her mind the faces of the accused and that, therefore, the omission

> to hold the test identification parade did not affect the credibility or truthfulness of their evidence."

Thus, in such circumstances, it was observed in the case of Ashfaq that the accused were present in the house for quite some time holding the witnesses at ransom by directing and issuing threat to relieve them of the valuables on which they could lay their hands and it is too much to claim, in spite of all this, that the evidence of PWs. 2, 3 and 10 could not be either sufficient to properly identify the accused or relied upon against the accused in the absence of proper test identification parade.

7. Thereafter, the learned advocate for the applicant has submitted that the applicant has been in custody for about 3 and half years and on this count, the applicant may be released on bail. It may be stated here that the applicant is involved in other case of similar nature i.e. C.R.No. 3213 of 2000 of J.J.Marg Police Station. Looking to these facts, I am not inclined to grant bail to the

applicant. However, liberty is granted to the applicant to prepare the paper book privately. Appeal to be placed for final hearing within a week of the paper books being furnished.

8. Application for bail, is rejected.

[V.K.TAHILRAMANI,J.]